

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *Application for Review of Starlink Services, LLC, Rural Digital Opportunity Fund, Rural Digital Opportunity Fund (Auction 904), Viasat Auction 904 Application for Review, WC Docket No. 19-126, OEA Docket No. 20-34, GN Docket No. 21-231, Order on Review.*

I wholeheartedly agree with the entirety of Commissioner Carr's dissent. I write separately to further highlight some of the meretricious logic that underlies the Bureau's, and now Commission's, rescinding of SpaceX's RDOF award.

The fundamental issue is that the majority is impermissibly holding SpaceX to its 2025 RDOF targets three years early, in 2022. In 2020, the Bureau accepted SpaceX's short-form application and winning bid to use a first-of-its-kind mass-market low Earth orbit (LEO) broadband service to deliver high-speed, low-latency internet to specified areas by 2025. But in August 2022, based on Ookla speed test data—data that in fact demonstrated the tremendous success of the Starlink system in delivering high-quality service to the most difficult-to-serve areas—the Bureau decided to rescind SpaceX's award. It concluded that because SpaceX had not yet met the 2025 speed and latency goals, and as it was using a new kind of system and could not point to others using similar technology to meet such targets, it was not reasonably capable of meeting that goal.

What good is an agreement to build out service by 2025 if the FCC can, on a whim, hold you to it in 2022 instead? In 2022, many RDOF recipients had deployed *no* service at *any* speed to *any* location at all, and they had no obligation to do so. By contrast, Starlink had half a million subscribers in June 2022 (and about two million in September 2023). The majority's only response to this point is that those other recipients were relying on proven technologies like fiber, while SpaceX was relying on new LEO technology. But the Commission knew that LEO-based service was new when it allowed LEO providers to participate in RDOF and when it accepted SpaceX's short-form application. So that cannot be a reason to change the rules in the middle of the game and hold SpaceX to a 2025 goal in 2022. Furthermore, SpaceX's technology *is* proven. The proof is the millions of subscribers—many in areas that other providers and the FCC have failed to serve for decades—already receiving high-quality broadband service through Starlink. And SpaceX continues to put more satellites into orbit every month, which should translate to even faster and more reliable service.

To justify its motivated reasoning, the majority points to delays in the development of SpaceX's Starship launch platform—the largest, most powerful rocket ever built—as evidence that SpaceX would be unable to launch enough Starlink satellites to meet its 2025 commitments. The trouble with this argument is that SpaceX never indicated that it was relying on the Starship platform to meet its RDOF obligations, and in fact it repeatedly stated that it was not. Undeterred by the facts, the Commission now resorts to twisting SpaceX's words. For example, SpaceX said in a letter to the Commission that it had “reached a point in the development of its Starship launch vehicle and Gen2 satellites [such] that it *can* concentrate solely on Configuration 1 and no longer pursue Configuration 2” (emphasis added). Configuration 1 involves launching with Starship, and Configuration 2 involves launching with Falcon 9. Nothing in this sentence suggests that SpaceX *needed* Starship to launch Gen2 satellites, but that's exactly the interpretation that the majority now relies on. Rather, the sentence says that because the Starship program was going well, SpaceX would be *able* to use it for that purpose. As a previous SpaceX letter—also quoted by the majority—says, “Configuration 2 provides an alternative that also leverages the capabilities of the reliable Falcon 9 rocket.” Of course, Starship did not turn out to be ready in time, but exactly as those letters suggest, SpaceX has nonetheless launched over fifteen hundred Gen2 satellites using the Falcon 9 rocket and now has over five thousand satellites in the Starlink system overall.

I was disappointed by this wrongheaded decision when it was first announced, but the majority today lays bare just how thoroughly and lawlessly arbitrary it was. If this is what passes for due process and the rule of law at the FCC, then this agency ought not to be trusted with the adjudicatory powers Congress has granted it and the deference that the courts have given it.